IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL APPLICATION

NOTICE OF MOTION NO.3478 OF 2000
IN
SUIT NO.4686 OF 2000

Abdul Sattar Lakdawall ...Plaintiff

Versus

Sidhram N. Gardas & Ors. ...Defendants

Shri V.S.Kapse for Plaintiff.

Shri S.S.Jagtap for the Defendants.

CORAM : ABHAY S.OKA, J.
DATED : MARCH 12, 2007.

P.C.:

1. Heard Advocates appearing for the parties. The Plaintiff has filed this suit for declaration that the Deed of Mortgage dated 14th January, 1998 executed by and between the first Defendant and the Plaintiff in respect of the suit property is legal, valid and subsisting. One of the prayers made in the suit is that the Plaintiff is entitled to remain and continue to remain in possession of both the shop premises on the ground floor of the mortgaged property bearing L/14 situated at Gandhi Nagar, Drainage Channel Road, Dainik Shivner Marg, Lower Parel, Mumbai 13 till the right of redemption and/or fore closure arises thereof.

2. The Plaintiff has taken out Notice of Motion No.3245 of 2000 in the suit. Prayer (a) in the said Notice of Motion is for temporary injunction restraining the Defendants from dispossessing the Plaintiff from both the shop premises. Prayer (b) was for temporary injunction restraining the Defendants from selling, transferring, assigning, disclosing or creating any third party interest in respect of the mortgaged property. On 20th November, 2000, this Court granted ad-interim relief in terms of prayer clauses (a) and (b) of the Notice of Motion No.3245 of 2000. Thereafter the Plaintiff has taken out the present Notice of Motion. The contention raised in present Notice of Motion is that after ad-interim order was passed in Notice of Motion No.3245 of 2000, the Defendants dispossessed the Plaintiff. On 13th December, 2000 in the present Notice of Motion, this Court passed an order granting ad-interim relief in terms of prayer clause (a) except bracketed portion. Prayer clause (a) is for appointment of Court Receiver, High Court, Mumbai with direction to the Court Receiver to take possession of both the shop premises. It is not in dispute that subsequently the Plaintiff was placed in possession of the shop premises as the agent of the Court Receiver.

3. The Notice of Motion No.3245 of 2000 came up before this Court on 05th September, 2002. This Court noted in the order passed on that day the ad-interim relief granted in present Notice of Motion No.3478 of 2000 and disposed of Notice of Motion No.3245 of 2000 by observing that it has become infructuous.

4. The present Notice of Motion was dismissed for default. The Notice of Motion No.1843 of 2006 was taken out by the Plaintiff for restortion. By order dated 30th June, 2006, the present Notice of Motion was restored. Alongwith the present Notice of Motion, even the Notice of Motion No.3245 of 2000 was restored without noticing the earlier order dated 05th September, 2002 passed by this Court. By the said order dated 30th June, 2006 this Court directed that Court Receiver shall not stand discharged till the present Notice of Motion was heard.

5. The learned counsel appearing for the Plaintiff submitted that the ad-interim arrangement which was made in 2000 is continuing till today and there is no reason why the said ad-interim arrangement should be disturbed

till the disposal of the suit. The learned counsel for the Defendants opposed the Notice of Motion by contending that after dismissal of the Notice of Motion for default, the receiver was ordered to be discharged.

6. I have considered the submissions. On the date on which suit was filed, prima facie, Plaintiff appears to be in possession as is reflected from order dated 20thNovember, 2000 passed in Notice of Motion No.3245 of 2000. The further order passed in the present Notice of Motion on 13th December, 2000 records that after ad-iterim relief was granted in Notice of Motion No.3245 of 2000, the Defendants forcibly dispossessed the licensee of the Plaintiff and Defendants obtained possession of the suit premises. Therefore, on 13th December, 2000, this Court granted ad-interim relief by appointing the Court Receiver and directing the Court Receiver to take possession of the shop premises.

7. On 12th January, 2001 the present Notice of Motion came up before this Court. In the order passed on that day this Court noted that the receiver has locked the said two shops. This court noted that one Shri M.C.Gangaram was in possession of one of the two

shops who has not removed his articles. By the order passed on that day this Court directed the Court Receiver to handover the possession of the two shops to the Plaintiff after the Plaintiff signs an Agreement of Agency for that purpose. This Court appointed the Plaintiff as the agent of the Court Receiver without requirement of payment of any royalty or charges. However, the Plaintiff was directed to bear all the outgoings of these two shops to the landlord and/or to the Municipal Corporation or other public bodies. The receiver was directed to remove the articles of said Shri Gangaram lying in one of two shops after giving notice to the said person.

8. Thus, as of today the Plaintiff is in possession of the shops in question as the agent of the Court Receiver. There is enough prima facie material on record to show that on the date of institution of the suit the Plaintiff was in possession. The Defendants dispossessed the Plaintiff by committing breach of ad-interim order passed by this Court in Notice of Motion No.3245 of 2000 and therefore, the present Notice of Motion was required to be taken out in which Court Receiver was appointed by way of ad-interim order and

the Plaintiff has been placed in possession as agent of the Court Receiver. The Plaintiff is acting as agent of the Court Receiver from the year 2001. In my view, considering the material on record and considering the conduct of the Defendants, the said arrangement deserves to be continued till the final disposal of the suit.

9. Hence, Notice of Motion is disposed of by passing following order:

(i) The ad-interim order passed by this Court on 13th December, 2000 will continue to operate as interim order subject to modification that the appointment of the Plaintiff as agent of the Court Receiver made under order dated 12th January, 2001 will continue on the terms and conditions which are incorporated in the said order dated 12th January, 2001.

(ii) Notice of Motion is disposed of accordingly.

(iii) There will be no orders as to costs.

(iv) It is clarified that the Notice of Motion

No.3245 of 2000 also stands disposed of.

(v) A copy of this order be kept on the record of Notice of Motion No.3245 of 2000.

JUDGE